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BY COURIER

July 7, 1992

ORIGIN' FI'

Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CC Docket No. 92-77,
In the Matter of Billed Party
Preference for 0+ InterLATA Calls

Dear Ms. Searcy:

Please find enclosed an original and nine copies of the Comments of the National Association of Convenience Stores for filing in the above proceeding. Please distribute a copy to each Commissioner's office.

If you have any questions concerning this filing, please do not hesitate to call me at (703) 836-9400. Thank you in advance for your cooperation and assistance.

Sincerely,

Alan J. Thiemann

Alan J. Thiemann

Counsel for the National
Association of Convenience Stores

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of:	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	

ORIGINAL
FILE

COMMENTS OF THE
NATIONAL ASSOCIATION OF CONVENIENCE STORES

On May 8, 1992, the Commission released its Notice of Proposed Rulemaking, inviting public comments on its proposal to mandate "billed party preference" ("BPP") as the universal and exclusive means of routing 0+ interLATA traffic and other operator-assisted interLATA calls from every payphone in the country. The National Association of Convenience Stores ("NACS") submits these comments in response to that notice, in order to assist the Commission in focusing on the significant issues posed by that proposal.

The concept of "billed party preference" became an issue before the Commission in 1989, when Bell Atlantic sought to obtain approval of that form of equal access through initiation of a rulemaking. Bell Atlantic Petition for Rulemaking to Establish Uniform Dialing Plan From Pay Telephones, RM-6723 (April 13, 1989). NACS, as one of the nation's largest representatives of premises owners providing payphone services, filed reply comments in that proceeding, strongly opposing billed party preference. Since then, the Commission has twice updated the record in that proceeding, although it has reached no decision. Now, in the instant rulemaking, the Commission has tentatively concluded that billed party preference is "in the public interest."

INTEREST AND IDENTITY

NACS is the national trade association of the convenience store industry, representing some 1,400 retail member companies which own and operate more than 69,000 stores. For 1991, the last year for which figures are available, those stores produced gross revenues of almost $75 billion.

Among the many profit centers in the convenience store is the bank of pay telephones from which the industry's millions of customers annually make their phone calls. A typical store will have between one and four phones, although that number may be greater in some high-volume locations, especially those on interstate highways. Convenience store customers, including local neighborhood patrons, sales persons, truck drivers and highway motorists, have come to rely on the easy access phone services provided in these stores. Indeed, the convenience of those phones has been synonymous with the marketing strategy employed in the industry.

In 1989, NACS estimated that some 130,000 pay telephones were then available at convenience stores across the country, and we believe that number has grown. Indeed, some pay telephones are now being provided as "drive-ups," where callers do not have to get out of their cars and be exposed to the elements when using the phone. Moreover, new telecommunications-related innovations, such as public facsimile equipment and a growing array of information and transactional services, also are provided at convenience stores, making them even more sensitive to changing customer needs. NACS submits that this trend toward expansion of information and transactional services will continue at an increased pace during the next decade.

Since this Commission first authorized competitive pay telephone services in 1984, NACS members have been among the most active premises owners to embrace this opportunity. Although there is no doubt that the issue of profitability is a major factor for the convenience store industry, commissions earned from these activities are not the only motivation for these premises owners -- convenience store owners and operators are highly dependent on satisfying customer telephone needs to gain and retain business. This customer service motive necessitates the use of the same criteria for high quality and reliability used in providing any other merchandise (or selecting a vendor to supply it) to ensure that customer satisfaction is achieved. These profit and service objectives are not mutually exclusive; in fact, they go hand-in-hand in making a business successful.

Therefore, NACS remains very concerned about how equal access will be accomplished in the future, as well as the adverse consequences to competition if billed party preference is mandated. The Commission must not lose sight of the fact that convenience stores -- as premises owners -- are themselves telephone customers, who are entitled to equal consideration with the "end-users" discussed in the notice of proposed rulemaking. For the future, as presently, some operator services provider ("OSP")[1] will be supplying services to convenience stores (and all other premises owners), and the fundamental question is whether the LECs will control which OSP is selected.

Consequently, NACS has a critical interest in the outcome of Commission's proposed decision on billed party preference. NACS wants to assure that its members' views on the issues surrounding billed party preference ("BPP") are taken into account before this Commission adopts rules that strip premises owners of the right to determine who provides services at their facilities. The proposal will eliminate the right of a premises owner to select which OSP it will use in meeting its service needs for, and commitments to, its customers, while at the same time furthering the premises owner's legitimate right to generate a profit.

As these comments will detail, adoption of billed party preference is unnecessary to achieve the objective of unfettered equal access and customer choice of long distance carrier, which is presently assured through existing laws and regulations. Indeed, all billed party preference will do is add an incredible

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[1] OSP includes both network-based IXCs and IXCs using independent operator services, regardless of whether the premises owner's phones are provided by a LEC or a competitive payphone provider.

cost onto the existing system with no improvement or expansion in choice, which cost must be paid for by all ratepayers, including the very premises owners whose interests are being rendered moot. Moreover, this new system will reintroduce LEC monopoly power and will stifle innovation in the provision of telecommunications services to convenience stores and other premises owners, and their customers.

COMMENTS

I. THE COMMISSION'S OVERRIDING CONCERN ABOUT COMMISSIONS PAID TO PREMISES OWNERS IS MISPLACED AND UNJUSTIFIED

As required by the district court under the equal access provisions of the Modified Final Judgment, presubscription of BOC and GTOC payphones was accomplished in 1989. Significantly, presubscription inherently recognized the right of premises owners, who aggregate substantial traffic at their locations, as the pivotal players in achieving equal access. That is why commissions are the logical extension of presubscription contracts. In fact, the Commission itself has recognized the inherent ability of premises owners to play a major role this equal access process by approving the interim "dial-around" compensation rate.[2]

[2] However, that interim decision is inadequate to even fully compensate premises owners for the "dial-around" traffic that is generated from their payphones. Moreover, that decision fails entirely to address compensation for 0+ calls. To the extent that the subject of this proceeding is 0+ traffic, NACS submits that the Commission is obligated to consider the question of who receives compensation for those calls -- premises owners under presubscription or LECs under billed party preference.

Although the Commission seems to believe that there is something inappropriate about premises owners being compensated (Notice at ¶¶ 13 and 19), NACS strongly believes that its members, and other premises owners, are entitled to these commissions and that such compensation has worked well in furthering the regulatory goal of equal access, while at the same time enhancing the accessibility of payphones for the public. Premises owners invest their resources to provide services and products to their customers, services which in today's "on the go" society. Thus, provision of pay telephones has become an essential service.

Some convenience stores and others premises owners have invested thousands of dollars in owning their phones, while others have contracted with LEC and non-LEC competitive payphone providers who install and maintain the phones. Either way, when space is devoted to payphones, the premises owner expects -- and deserves -- to be compensated for the use of that space and the overhead (e.g., labor and phone lines) associated with it.[3] To be sure, premises owners have not lost sight of the customer service needs discussed earlier in this statement, but there can be no doubt that

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[3] Similar to others who have carved out new niches for themselves in the "reselling" of telecommunications services, premises owners and/or their agents must first acquire needed payphones lines from the LEC. As NACS can attest from its own experiences in participating in various state rate cases, the rates premises owners pay for the right to offer competitive payphone services are very profitable for the local telephone companies. Thus, the Commission should not accept mischaracterizations offered by those supporting BPP that paying commissions to premises owners is a problem.

profitability is expected. Any time a business uses its resources, it expects to earn a profit on each product or service - and payphones are no exception.

Some businesses are better suited for attracting payphone customers, or do a better job of encouraging payphone usage than do others. The resulting levels of aggregation of traffic, particularly 0+ traffic, is reflected in the size of the commissions that a premises owner will receive. Accordingly, NACS believes that the current system recognizes -- and rewards -- the legitimate services provided by premises owners in bringing that traffic to the respective OSPs. The competition that has arisen between OSPs is market-driven,[4] and this Commission should be extremely leery about substituting another form of equal access that is less competitive or recreates a monopoly.

Therefore, NACS asserts that the proposed billed party preference will adversely affect a number of small businesses, including many convenience store companies and most competitive payphone providers. Inasmuch as substantial financial benefits of

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[4] NACS notes that, in 1989, MCI opposed the imposition of billed party preference, stating that, "Most presubscribed interexchange customers can use their carrier at most payphones, irrespective of the presubscription carrier for the payphones." Now, MCI has flip-flopped. Could it be that MCI has not been as successful in competing for premises owners' locations as other carriers, and would now prefer to avoid the need to compete at all? Ironically, MCI, which has been very successful at marketing its 1+ services, would presumably be one of the big winners under a billed party preference scheme.

adopting billed party preference will accrue to the LECs, a comparison of these harms and advantages should demonstrate that the proposal is off-target. NACS is disturbed that the Commission apparently views compensation for 0+ traffic as bad for the consumer when premises owners receive it, but good when LECS receive it. It is disingenuous to focus on premises owners' commissions, and yet fail entirely to mention that the LECs will benefit financially under billed party preference.

Ironically, when the BOCs first introduced their presubscription plans, including in the transmittals to the Commission, they described premises owners as their "primary customers." These plans and their explanations amply demonstrate that the premises owner is more than a lessor of shelf space to the LEC or non-LEC payphone provider, but instead is an active participant in the provision of pay telephone services to the public. NACS would like to know what has happened to this recognition -- we strongly suspect that it has been replaced by the LECs own profit motive to obtain financial benefit from billed party preference.

II. BILLED PARTY PREFERENCE WILL NOT IMPROVE EQUAL ACCESS, NOR WILL IT EXPAND BENEFITS OR LOWER COSTS TO END-USERS

On the other hand, despite the strong entitlement that premises owners ought to have to continue receiving their commissions, it is appropriate for the Commission to inquire about how equal access has fared under the current system. NACS contends that equal access by presubscription through premises owners has achieved the objectives set out by the district court. Although some early efforts by premises owners to implement payphones may have created equal access violations, those problems have been addressed and largely eliminated. Most of the problems were resolved by the premises owners who became aware of complaints from their customers and reacted to regain customer satisfaction by unblocking phones or making access available by the use of carrier codes.

Additional changes occurred after Congress enacted the Telephone Operator Consumer Services Improvement Act (TOCSIA) in October 1990. Since then, convenience store owners and operators, and other premises owners in other industries, have encountered little or no problems ensuring compliance with the law. Callers are given identification of and notice about the presubscribed carrier, and if the caller chooses, access to any other long distance provider that serves the area is easy to obtain. The Commission's resurrection of these problems in the Notice, despite the corrective actions it has required, seems to be a case of living in the past. NACS hopes that the Commission's final decision returns the focus to more current issues.

Moreover, in the aftermath of implementing TOCSIA, NACS believes that increased availability of, and familiarity with, access codes and the assurance that access will not be blocked, will result in even greater caller satisfaction with this approach. In part, these benefits will continue to emerge as OSPs finish implementing 10XXX, 800 and 950 access codes. Indeed, by the time billed party preference could become a reality, NACS predicts that the nation will be quite comfortable with the current system. From what individual convenience store companies have shared with NACS, and from personal experiences travelling around the country, the average person does not today find more sophisticated phones and dialing access codes to be an impediment. Here again, the Commission seems to be living in a bygone era when "user-friendly" equipment was needed to get along in a nascent computer age.

Unfortunately, then, for all these reasons, it appears that the Commission has inappropriately precipitated a change in the equal access rules before full implementation of TOCSIA has even occurred. Since the Commission has just reimposed a deadline for the remainder of the unblocking rules and new access codes, originally stayed from the March 12, 1992 deadline, it is hard to understand why billed party preference is being pushed before those rules are permitted to take hold and perform as they are intended. This premature action allows no opportunity to measure the outcomes of the TOCSIA rules and represents unjustified government interference.

Finally, NACS contends that the focus on customer choice as a basis for the BPP proposal is misapplied. The Commission's discussion of the benefits of billed party preference seems to assert that some new elements of customer choices will become available. In fact, no better or expanded access will be obtained under billed party preference than is available to callers under the present system, as described above.[5] At best, the only thing proponents of BPP can point to is the elimination of the access code digits. The accumulated price for such a change is staggering, based upon individual estimates by AT&T, which opposes BPP, as well as those who endorse BPP -- hundreds of millions of dollars. Who must pay for the "luxury" of reducing the number of digits to place a call? Of course, these huge costs will be included in future rate increases and thus, will be borne by every telephone user in the country, including the premises owners, who are themselves consumers, too.[6]

Finally, the Commission compounds its mistake about who are really customers by asserting that billed party preference will

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[5] If anything, as NACS will show, there is a distinct likelihood that end-users will actually suffer a loss of payphone locations. Substitution of BPP for the current system of access does not constitute an even trade, since tens of thousands of payphones provided by premises owners may be jeopardized.

[6] A related issue is the repeated concerns that have been expressed about billed party preference creating inconveniences for callers. From what NACS has been told, and as was discussed in various comments filed in 1989, it is expected that call set times could increase on some calls, and callers might have to deal with billing information to be repeated. As NACS stated in its reply comments in the 1989 proceeding, convenience store customers would find such situations to be problems, not solutions. They definitely would not consider a system where these problems occur to be "user-friendly," as the Commission has used that term to describe BPP.

lower costs to end users, Notice at ¶ 19. As the costs shown in the record to date reflect, there is no basis for concluding that customers will receive lower costs at all. There is no cost/benefit analysis that the Commission has prepared, or that NACS believes could be prepared, given the evidence in the record to date, that would support the conclusion that lower customer costs will result from billed party preference.

Moreover, there is no doubt that the LECs intend to produce a profit from providing the services they desire to perform under the billed party preference scheme. Those new fees will be assessed on many of the same carriers who today provide the revenue that is passed along to premises owners in the form of commissions. So it should be clear tho the Commission that someone is going to make that profit -- either the premises owners or the local telephone companies. Thus, the only question is who will the Commission select to receive the financial rewards of equal access?

III. BPP WOULD STIFLE FUTURE COMPETITION AND INNOVATION IN THE PAY TELEPHONE AND RELATED MARKETS

Thus, the Commission's views ignore the fact that premises owners are indeed customers, and that premises owners have played a significant role in encouraging innovation and competition in the payphone market. NACS sincerely hopes that the Commission is not suggesting that it roll back the clock to pre-1984. Just as competition and innovation may be ready to provide even more dramatic improvements for the future, the Commission's proposal would create the very "bottleneck" that existed then.

Prior to 1984, most convenience stores had no choice in where to turn for service and they received little, if any, commissions for the calls that were placed on pay telephones located at their facilities from the LEC who served the respective territories. In fact, it was not uncommon for some convenience stores to have to pay the LEC for "semi-public" phones installed at the store. After deregulation, competition exploded and today, convenience stores have significant choices in obtaining quality services for the phones at their stores, while still enabling companies to earn a reasonable profit for the use of their locations.[7]

At present, it is possible for every convenience store owner or operator to earn revenue on 0+ calls made from the store with no diminution of choice to the store's customers. Under billed party preference, the owner would lose the ability to make a choice of OSP, which virtually makes it impossible for any OSP to continue to pay commissions. Without those 0+ commissions, the ability of premises owners to continue to justify their investment in payphones (or the contractual investment of a payphone provider) will vanish or be so reduced that other uses for that space will

[7] Service innovations include: (1) basic maintenance and repair through sophisticated computer diagnostics and remote equipment polling; (2) enhancements, such as storing and forwarding billing information and forwarding of individual messages; and (3) technological advancements that enable the completion of calls without network operators. All of these beneficial developments take place at the location of the payphones, i.e., <u>at the premises</u>.

be considered. Literally thousands of payphone locations are being jeopardized by the Commission's proposal.

Even more importantly for the convenience store industry, billed party preference would place control of access from these stores back into the hands of the entities who monopolized the market for years. Today, it is a payphone on the wall, but tomorrow it will be a public access terminal, capable of delivery to convenience store customers access to a host of data, voice and image informational and transactional opportunities. It is common knowledge that the Regional Bell Operating Companies have been locked in a life and death struggle to obtain the right to enter the information services market. It is apparent to NACS, at least, what it would mean for the Bell companies to gain entrance into that market, especially combined with regaining control over the local bottleneck. The mere thought of such a return to the "take it or leave it" days of local telephone company control should scare the Commission into dropping the billed party preference concept forever.

Convenience store owners and operators suggest that the RBOCs' position on information systems -- that added competition will be good for customers -- is exactly the policy that ought to apply in the equal access arena. If this Commission is serious about finding an answer for equal access that is truly "in the public interest," it must settle on retention of the current system, for it is the <u>one</u> way to continue the march toward competitive solutions.[8]

CONCLUSION

NACS has pointed out three main problems with the Commission's proposal to adopt billed party preference: (1) the decision appears based on unjust apprehensions about premises owners' compensation, when in fact the alternative will financially benefit the local telephone companies; (2) billed party preference will not improve or expand the consumers' ability to obtain equal access over and above the current presubscription system; and (3) serious harm will be done to the existing competitive marketplace if billed party preference is adopted, which will stifle the growth of innovation just as the country is on the verge of an information and transactional services explosion.

For all these reasons, NACS urges the Commission to reject its tentative conclusion that billed party preference is in the public

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[8] Although these comments are not filed under the Commission's expedited schedule to address the AT&T proprietary card issues, it strikes NACS that the competitive answer is to require all proprietary card issuers to make billing and validation information available across the board, so no one will be disadvantaged. Thus, OSPs will be forced to compete on real service characteristics, rather than on any artificial advantages that may arise because of the customer base controlled by one card or another. This result will also continue the trend toward the use of commercial credit cards, which generally is accepted as pro-competitive, since so many callers carry a number of such cards already.

interest, and issue a final decision retaining the current presubscription system.

Respectfully submitted,

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